

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/24/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000544

FILED: _____

STATE OF ARIZONA

KATHY J LEMKE

v.

KIMBERLY MARIE POPILEK

JOHN L POPILEK

BUCKEYE JUSTICE COURT
DISPOSITION CLERK-CSC
FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC

MINUTE ENTRY

BUCKEYE JUSTICE COURT

Cit. No. 1915385

Charge: A. EXCEED 85 MPH

DOB: 04/14/80

DOC: 02/24/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since oral argument on April 24, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has reviewed the record of the proceedings from the Buckeye Justice Court, the Memorandum from Appellant and the exhibits made of record.

The first issue raised by the Appellant concerns the sufficiency of the evidence to warrant the conviction and finding of guilt. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.² If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in State v. Tison⁶ that "substantial evidence" means:

¹ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

² State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

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More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

Appellant also contends that the statutes cited in the complaint are inapplicable to the driving described by the officer during her trial. Regarding matters of statutory interpretation, the standard of review to be used by an appellate court is *de novo*.⁸ An appellate court must not reweigh the evidence presented to the trial court in resolving issues of statutory interpretation.⁹ This Court must be guided by general principles of statutory construction which require that this court liberally construe a statute so as to effect the legislative intent and to promote justice.¹⁰ A primary function of an appellate court is to determine the legislative intent and give effect to that legislative intent.¹¹

This Court concludes that a reasonable interpretation of the statute charged is appropriate to those facts described by Officer Hanson during his testimony at Appellant's trial. Therefore, this Court rejects Appellant's proposed construction of the statute.

⁷ Id. At 553, 633 P.2d at 362.

⁸ In re: Kyle M., 200 Ariz. 447, 27 P.3d 804 (App. 2001); see also, State v. Jensen, 193 Ariz. 105, 970 P.2d 937 (App. 1998).

⁹ Id.

¹⁰ See, A.R.S. Section 1-211.

¹¹ Calvert v. Farmers Insurance Co., 144 Ariz. 291, 697 P.2d 684 (1985).

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Appellant also briefly raises the issue that she was not informed of her Miranda Rights¹² by the arresting officer. The record does reflect that the trial judge allowed the arresting officer to testify to statements made by Appellant in response to questions posed by Officer Hanson after Appellant had been taken into custody, and handcuffed. The record also discloses that Appellant's trial attorney made a timely objection to these questions, but the objection was overruled. Clearly, the prerequisite for the admissibility of statements made by a Defendant in custody in response to an officer's questions requires that a Defendant be informed of his or her Miranda rights.¹³ That was not done in this case.

The offense charge is a class 3 misdemeanor offense, not a civil or criminal traffic offense. The trial court erred in admitting evidence that was obtained in violation of Appellant's rights. The failure of the police officers to inform Appellant of her Miranda rights prior to questioning her was error. Evidence obtained from such questioning is not admissible.

IT IS THEREFORE ORDERED reversing the judgment of guilt and sentence of the Buckeye Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the Buckeye Justice Court for a new trial consistent with this opinion.

¹² Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

¹³